

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MARIA M. TEJEDA	:	SMALL CLAIMS DETERMINATION DTA NO. 820582
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2004.	:	

Petitioner, Maria M. Tejeda, 636 West 136th Street, #4, New York, New York 10031, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 2004.

A small claims hearing was held before Timothy J. Alston, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on May 3, 2006 at 9:15 A.M., which date began the three-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Susan Parker).

ISSUE

Whether the Division of Taxation properly disallowed petitioner's claimed earned income credit and dependent care credit for the 2004 tax year because she failed to substantiate her earned income and child care expenses as reported on her 2004 New York State resident income tax return.

FINDINGS OF FACT

1. Petitioner, Maria M. Tejeda, timely filed her 2004 New York State and City Resident Personal Income Tax Return. Petitioner filed as “head of household” and claimed two dependent exemptions for her sons, Jeremy, born August 6, 2004, and Joshua, born September 14, 2003. Petitioner’s children lived with her at 636 West 136th Street, #4, New York, New York in 2004.

2. Petitioner’s 2004 tax return reported New York adjusted gross income of \$9,709.00, which consisted of wages of \$552.00, business income of \$9,853.00, and a \$696.00 adjustment to income for one-half of her Federal self-employment tax. After allowing for the standard deduction and petitioner’s two dependent exemptions, there remained no taxable income and thus no State or City tax due. Petitioner’s return claimed a refund of \$2,172.00, which included \$1,167.00 for the New York State earned income credit, \$195.00 for the New York City earned income credit, \$747.00 for the New York State child and dependent care credit, and \$63.00 for the New York City school tax credit.

3. The Division of Taxation (“Division”) sent a letter to petitioner dated February 24, 2005 requesting documentation to support her claims for the earned income and dependent care credits. By letter dated May 11, 2005, the Division denied these claims. The Division did grant petitioner’s claimed refund of school tax credit of \$63.00.

4. Petitioner’s 2004 return included two Federal schedule C’s. Petitioner reported \$5,903.00 in business income from a “tax preparation service” and \$3,950.00 in business income from “translation services.”

5. Petitioner also attached a Form 2441, Child and Dependent Care Expenses, to her 2004 return which reported \$1,941.00 in qualified child care expenses in 2004 and identified Brunilda De Jesus as care provider.

6. Petitioner began providing services to Mora Tax Service, 2419 Grand Avenue, Bronx, New York, as an income tax preparer and translator in mid-January 2004. She did not work in August or the first part of September because of the birth of her son on August 6, 2004.

7. To substantiate her claim for the earned income credit petitioner submitted a letter dated May 31, 2005, from Juan Mora, president of Mora Tax Service, stating, in part:

Please be advised that [petitioner] has been working in this company since mid January of 2004. Ms. Tejeda has been one of our support staff during the tax season, and also translates documents from Spanish into English and vice versa. From January through April she got paid a base salary of \$500 every week in cash, and during the rest of the year she worked at home as a free-lance translator; she earned \$3950 for her translation services, and also got paid in cash.

8. Petitioner received \$552.00 in income in 2004 from her former employer, Dallas BBQ.

9. To substantiate her claim for dependent care credit petitioner submitted a notarized letter dated June 3, 2005 from Brunilda De Jesus which stated that, since November 6, 2003, Ms. De Jesus provided babysitting services for petitioner at a salary of \$80.00 per week. Petitioner also submitted photocopies of eight receipts, each of which indicates on its face that Ms. De Jesus received \$80.00 from petitioner. The receipts are dated November 6, 2004, November 13, 2004, November 20, 2004, November 27, 2004, December 4, 2005, December 11, 2005, December 18, 2005, and December 25, 2005. The receipts were submitted with petitioner's petition in this matter, which was received by the Division of Tax Appeals on June 13, 2005.

CONCLUSIONS OF LAW

A. Tax Law § 606(d) provides that the New York State earned income credit for the 2004 tax year is equal to thirty percent "of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . ." Since the State earned income credit is determined based solely on a percentage of the Federal credit, it is appropriate to refer to the

provisions of the Internal Revenue Code (“IRC”) and Federal case law to determine petitioner’s eligibility for the earned income credit.

B. The Federal earned income credit, provided for pursuant to IRC § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based on a determination of a taxpayer’s “earned income” which includes, *inter alia*, wage income and earnings from self-employment (*see*, IRC § 32[c][2]). Since the Division has conceded that petitioner had two qualifying children for earned income credit purposes, the only issue to be addressed herein is whether petitioner has sustained her burden of proof (*see*, Tax Law § 689[e]) to show that she generated \$9,709.00 of earned income during the 2004 tax year.

C. In the instant matter, petitioner has failed to meet her burden of proof to show that she had \$9,853.00 of income in 2004 from her activities as an income tax preparer and a translator. In my view, petitioner did not produce sufficient documentation to clearly show that she earned the amounts as reported on the return. Such earnings easily could be documented by 1099’s, the records of Mora Tax Service, or bank deposit records, yet there is no such documentation in the record. Furthermore, although expressly asked to do so on cross-examination by the Division’s representative, petitioner could offer no explanation as to how she kept track of the income she earned during the year and thus offered no explanation as to how she determined the amount of income reported on her return. Even the amounts that petitioner claimed she was paid by Mora Tax Service simply do not support the amounts reported on the schedule C’s. Specifically, petitioner testified that she was paid \$500.00 per week from mid-January through April and \$300.00 to \$400.00 per week from May through July and mid-September through December. Such claimed weekly payment amounts easily exceed \$15,000.00 annually and thus do not

support petitioner's reported \$9,853.00 of earned income in 2004 from her activities as an income tax preparer and a translator.

D. The record does show that petitioner had \$552.00 in earned income from her former employer (*see*, Finding of Fact "8") and is therefore entitled to the earned income credit to the extent allowable by such income.

E. As to petitioner's claim for dependent care credit, petitioner has failed to sustain her burden of proving that she spent \$1,941.00 on child care in 2004 as claimed on her return. The receipts submitted to substantiate this claim clearly lack credibility considering that the dates listed on four of the eight receipts fall after the date the receipts were received by the Division of Tax Appeals (*see*, Finding of Fact "9"). Furthermore, the amount that Ms. De Jesus claimed to have been paid, i.e., \$80.00 per week for all of 2004, is far greater than the amount claimed on Form 2441 attached to the return

F. The petition of Maria M. Tejeda is granted to the extent indicated in Conclusion of Law "D," but is in all other respects denied, and the Division's Notice of Disallowance dated May 11, 2005, as modified pursuant to Conclusion of Law "D," is sustained.

DATED: Troy, New York
June 29, 2006

/s/ Timothy J. Alston
PRESIDING OFFICER